

**TITLE 33 – ENVIRONMENTAL QUALITY**  
**PART V. HAZARDOUS WASTES AND HAZARDOUS MATERIALS**  
**SUBPART 2. DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS**  
**CHAPTER 101. HAZARDOUS MATERIAL INFORMATION**  
**DEVELOPMENT, PREPAREDNESS, AND RESPONSE ACT**

- §10101. Declaration of Authority, Background, Policy and Purpose
- §10103. Scope
- §10105. Definitions
- §10107. Alternate Means of Compliance: Inventory Reporting
- §10109. Inventory Reporting
- §10111. Release and Incident Reporting
- §10112. Response, Command and Coordination
- §10113. Exemptions
- §10115. Hazard Communication
- §10117. Failure to Report: Penalties
- §10119. Inventory Form
- §10121. Fees
- §10123. Trade Secret Claims; Procedures; Resolution

Hazardous Material Information Development, Preparedness and Response Act (LAC 33:V.Chapter 101) The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq. and R.S. 30:2361 et seq. hereby amends LAC 33:V.Chapter 101, the rules concerning Hazardous Material Information Development, Preparedness and Response Act.

#### **§10101. Declaration of Authority, Background, Policy and Purpose**

- A. The following rules are hereby promulgated pursuant to the authority provided in R.S. 30:2361-2380 regarding the Hazardous Material Information Development, Preparedness, and Response Act.
- B. This Act was originally passed as Act 435 of the 1985 Legislative Session to implement the state's first "Right-To- Know" law. In 1986 the United States Congress passed the Superfund Amendments and Reauthorization Act (SARA). Title III of SARA required, among other things, that the governor of each state appoint an Emergency Response Commission.
- C. Compliance with Louisiana's Right-to-Know law will attain compliance with SARA, Title III.
- D. It should be noted that the Louisiana Emergency Response Commission, operating within the Department of Public Safety and Corrections, is the primary entity to which SARA, Title III communications are made. Copies of annual inventory forms must also be submitted to the local emergency planning committee in the parish where a facility is located and to the local fire department having jurisdiction over the facility.
- E. Since the chemical lists, release reportable quantities and threshold (inventory) quantities (TQ) in the federal regulation are subject to change, facility owners/operators should refer to the *Federal Register* and the *Code of Federal Regulations* in addition to the Louisiana regulations to determine current reporting requirements before submitting their annual inventory forms and emergency release notifications.
- F. It is the purpose of these rules to implement the information system conceived of in the state's original Right-to-Know law by providing the citizens of this state, as well as emergency response personnel, with data on hazardous material storage necessary to make educated and responsible decisions.

#### **§10103. Scope**

- A. These rules apply to the following:
  - 1. any facility which manufactures, handles, uses, or stores any hazardous material(s) in excess of the threshold inventory quantity; and
  - 2. any facility, transportation-related operation, or transport vehicle from which a reportable release occurs; and
  - 3. all surface and subsurface related modes of hazardous materials transportation including but not limited to all water (vessels and barges), air, highway, rail and pipeline operations.

#### **§10105. Definitions**

- A. The following terms as used in this Chapter shall have the following meanings.

*Commission:* the Louisiana Emergency Response Commission appointed by the governor to implement the mandates of the Superfund Amendments and Reauthorization Act passed by the U.S. Congress in 1986. This commission is created within the Department of Public Safety and Corrections, Public Safety Services.

*Department:* the Department of Public Safety and Corrections.

*Deputy Secretary:* the deputy secretary for the Office of Public Safety Services in the Department of Public Safety and Corrections.

*Environment:* includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

*Escape Beyond Facility:* for the purposes of release reporting a release is considered off-site when the hazardous material or hazardous substance is released into the air or into any water, drainage ditch or canal such that the released hazardous material or hazardous substance could reasonably be expected to escape the confinement of the facility or to an area which the general public has unrestricted access.

*Extremely Hazardous Substance (EHS):* a hazardous substance listed by the United States Environmental Protection Agency (U.S.EPA) in 40 CFR ,Part 355, Appendix A ( the list of Extremely Hazardous Substances and their Threshold Planning Quantities ) and subject to the emergency planning, release reporting and MSDS filing, and inventory filing requirements of SARA, Title III.

*Facility:* the physical premises used by the owner or operator in which the hazardous materials are manufactured, used, or stored. A natural gas pipeline shall not be classified as a compressed natural gas facility.

*Hazardous Material:* any substance deemed a hazardous material or a hazardous substance, and included on a list adopted by rule by the deputy secretary to include those materials deemed hazardous under the Comprehensive Environmental Response Compensation Liability Act (CERCLA), the Superfund Amendments and Reauthorization Act ( SARA, Title III, U.S.C.), and certain substances included in the most recent United States Department of Transportation regulations as found in 49CFR, Part 172.101.

*Hazardous material:* also means any substance designated by the deputy secretary in these rules which meets criteria established for adding other materials to the list. This term shall mean and include hazardous substances.

*Hospitalization:* the admission into a hospital as a patient.

*Immediately;* a reasonable period of time, after identifying the nature, quantity, and potential off-site impact of a release considering the exigency of the circumstances.

*Incident:* Any release, fire, explosion or event which is other than any normal operational activity, and which results in an unusual or emergency condition. An actual release of any hazardous material is not required.

*Inventory Form:* the reporting form adopted by the department and completed by owners and operators which contains certain requested information on hazardous materials and which is used in developing the information system mandated by the law and these regulations. This shall also include electronic transmission of data within the State Police's Louisiana Chemical Network Tier Two "E-filing" process.

*Local Governing Authority:* the police jury, parish council, the mayor's office of the city of New Orleans or the city-Parish of East Baton Rouge or other primary governmental body of a parish.

*Local Emergency Planning Committee:* the committee in each parish designated by the Emergency Response Commission to coordinate Right-to-Know activities.

*Local Repository:* the local entity designated pursuant to R.S. 30:2368 to house and record information on hazardous materials received from the department, regulated facilities, and other state agencies for public dissemination and inspection.

For the purposes of Tier Two electronic reporting "e-filing," the local repository shall have the authority to designate the Department of Public Safety, Office of State Police, Right-to-Know Unit's electronic Tier Two system as its official repository of Tier Two records.

*Owner or Operator:* any person, partnership, or corporation in the state including, unless otherwise stated, the state and local government, or any of its agencies, authorities, departments, bureaus, or instrumentalities engaged in business or research operations which use, handle, manufacture, release or store a hazardous material at a facility.

*Release:* any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous material or substance. However, the term release shall not include federal or state permitted releases.

*Reportable Release:* a release of a regulated hazardous material or substance which causes any injury requiring hospitalization or any fatality, results in a fire or explosion which could reasonably be expected to affect the public safety beyond the boundaries of the facility, or exceeds the reportable quantity when that reportable quantity, as defined pursuant to rules promulgated by the deputy secretary, could be reasonably expected to escape beyond the site of the facility.

A reportable release as defined herein shall be based upon the quantity of hazardous material or substance discharged continuously, intermittently, or as a one-time discharge, within any continuous twenty-four hour period.

*Retail Gas Station:* a retail facility engaged in selling gasoline or diesel fuel primarily to the public, for use in land based motor vehicles.

*Small Business:* a single business establishment employing not more than nine full time employees and having not more than two million dollars (\$2,000,000) in average annual gross receipts. Any business employing more than nine persons shall not be considered a small business regardless of the average annual gross receipts.

Any business with average annual gross receipts of over two million dollars (\$2,000,000) shall not be considered a small business regardless of the number of employees.

*State Repository:* the Department of Public Safety, Office of State Police, Right-to-Know Unit designated by the local emergency planning committee, local repository or fire department as the provider of Tier Two inventory records electronically to all response agencies. The state repository shall have the responsibility to process public information requests for Tier Two and release reporting data.

*Trade Secret:* any confidential formula, pattern, process, device, information or compilation of information including chemical name or other unique chemical identifier that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

*Transportation Related Operation:* any operation conducted outside the boundaries of a facility and involving the transportation, or storage incident to transportation, of hazardous materials where the hazardous materials are moving under active shipping papers and have not reached the ultimate consignee.

#### **§10107. Alternate Means of Compliance: Inventory Reporting**

- A. The following non-exclusive list of facilities qualifies for alternate means of compliance under state law due to the nature of their respective operations as well as the fact that emergency response personnel can predict that hazardous materials should be present at these facilities. These alternate means of compliance may not exist under federal law and facilities subject to the federal law must determine their respective applicability:
1. oil and gas exploration and production facilities;
  2. pipelines carrying any of the materials regulated by these rules;
  3. certain facilities reporting to other state agencies;
  4. gasoline service stations;
  5. electrical transmission and distribution facilities;
  6. hydrocarbon storage facilities other than at petroleum refineries;
  7. transportation-related facilities.
- B. The rules that follow in Subsection C are applicable to the state law. The reporting procedures outlined are the result of detailed consultation with the various regulated entities. These alternate compliance procedures will satisfy the mandates of the state's Right-to-Know law, but if any federal regulations require a more stringent reporting procedure, the federal procedure should be followed.
- C. Inventory Reporting Procedures (Alternate Means of Compliance)
1. Oil and Gas Production (Wells Already Drilled)
    - a. These sites must be reported by field name, indicating the total number of wells in each field. This will be done on a separate inventory form for each field. The location of each field must be as detailed as possible with at least the parish given for each field.
    - b. The inventory form can be filled out showing a generic list of materials commonly associated with an oil/gas production facility.
    - c. Well heads not located in a reported field (wildcats) are each to be listed on a separate inventory form.
    - d. All reportable releases must be reported immediately to the local emergency planning committee and the Emergency Response Commission.
  2. Oil and Gas Exploration
    - a. If the exploration site is in a previously reported field, a list of materials used in exploration will be shown on the inventory form for that field. This could be in the form of a generic list.

- b. Wildcat drilling operations (not in previously reported fields) anticipated to exceed 30 days will require written notification to the Emergency Response Commission via the Office of State Police, Transportation and Environmental Safety Section, as well as written notification to the local emergency planning committee in the respective parish, detailing the location and anticipated duration of the drilling operation.

This notification will contain the names and telephone numbers of facility personnel to contact in case of an emergency. A generic list of materials associated with exploration will be furnished to the local emergency planning committee in the parish in which the drilling occurs.

- c. All reportable releases must be reported immediately to the local emergency planning committee and the Emergency Response Commission.

3. Pipelines (not within the fence line of a facility)

- a. One inventory form will be submitted for each parish. The form must list all pipelines operated by a facility in that parish, and must show the name of the material carried, the diameter, and the maximum operating pressure for each listed pipeline.
- b. A map for each parish indicating the location of each pipeline and transmission and control station must be provided by each company to the Emergency Response Commission and the local emergency planning committee. If the pipeline is shown on the most current Dewitt map, no map submission is required.

Facilities are responsible for updating any changes in location of pipelines and/or product by submitting new map(s). If a facility has already submitted a map to the Emergency Response Commission and the local emergency planning committee, and there are no changes, the annual map submission is not necessary.

- c. Natural gas distribution lines are exempt from this reporting. Distribution lines are those pipes that carry the gas to individual buildings, residences, etc.
- d. Crude oil and natural gas gathering lines are exempt from inventory reporting under these rules. Gathering lines are those pipelines eight inches or less in nominal diameter that transport petroleum and natural gas from a production facility to the main pipeline.
- e. All reportable releases, including those from natural gas distribution lines and crude oil and natural gas gathering lines, must be reported immediately to the local emergency planning committee and the Emergency Response Commission.

4. Facilities Reporting to Other State Agencies.

- a. Facilities licensed by the Liquefied Petroleum Gas Commission must complete an inventory form and comply with all other applicable parts of these rules with the exception that if liquefied petroleum gas is the only material being reported, no reporting fee is required.
- b. Facilities licensed pursuant to and in full compliance with the Louisiana State Police Explosives Code are exempt from inventory reporting if no hazardous materials other than explosives are present on the facility. However, all incidents or releases involving explosives are subject to the reporting required herein.

5. Electrical Transmission and Distribution Facilities

- a. All oil-filled electrical equipment (transformers, capacitors, etc.) which has been identified as containing Polychlorinated Biphenyls (PCB's) in concentrations exceeding 500 parts per million (ppm) shall be reported on the inventory form, by the reporting deadline, as applicable in these rules if the weight of the solution containing the PCB's meets or exceeds 500 pounds.
- b. Any release from, or accident involving, oil-filled electrical equipment which has been identified as containing PCB's in concentrations exceeding 500 ppm will be reported immediately as applicable in the release reporting procedures detailed in these rules.
- c. All fixed-site facilities where transformers are stored, cleaned or processed, or where other materials regulated in the rules are used or stored, will be reported on individual inventory forms for each separate site.
- d. Fixed-site oil-filled electrical equipment that is associated with a facility must meet all area marking requirements under EPA and OSHA regulations.

6. Transportation-Related Industries

- a. Regulated materials which are under active shipping papers (i.e., have not reached their final destination) are exempt from inventory reporting requirements contained in these rules.
- b. Transportation related industries, including but not limited to trucking companies, railroads, maritime wharves and warehouses (including Foreign Trade Zones), that store, incidental to transportation and still under active shipping papers, any of the materials regulated by these rules will, on an annual basis (by March 1 of each year), send to the Emergency Response Commission, the local emergency planning committee, and the local fire department in their respective areas, a letter detailing the emergency contact personnel and emergency telephone numbers.

The letter will also indicate where shipping papers can be found by emergency response personnel.

- c. Any hazardous materials regulated under these rules and stored on site but not under active shipping papers must be reported on an inventory form as applicable.
- d. Shipping documents must be readily accessible to emergency response personnel and proximate to the regulated material.
- e. All regulated materials must be properly marked and placarded according to applicable U.S. Department of Transportation regulations as listed in 49 CFR Part 172 Subparts B, C, D, E and F.
- f. All reportable releases must be reported immediately to the local emergency planning committee and the Emergency Response Commission.

**§10109. Inventory Reporting**

- A. All substances listed on the list of "Extremely Hazardous Substances" as found in 40 CFR Part 355 Appendix A, now in effect or amended hereafter, must be reported for the prior calendar year beginning January 1 and ending December 31, on an inventory form by March 1, 1988, and annually thereafter, if the material is present on site on any single day in amounts of 500 pounds or more or the listed threshold quantity if lower than 500 pounds.

The threshold (inventory) quantity (TQ) for each of these materials is indicated (in pounds) in the column to the right of the material marked "Threshold Inventory Quantity (TQ)."

Where a material shows a threshold (inventory) quantity (TQ) listed as 10/500 or 100/500 etc., it is reportable as follows: The lower number is the reportable amount if the material is a solid existing in powdered form and has a particle size less than 100 microns; or is handled in solution or in molten form; or meets the criteria for a National Fire Protection Association (NFPA) rating of 2, 3, or 4 for reactivity. If the solid does not meet any of these criteria, it is subject to the higher inventory reporting threshold.

B. Any material for which a facility must prepare or maintain a Material Safety Data Sheet (MSDS) under the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (as listed in 29 CFR 1910.1200 et seq.) must be reported, for the prior calendar year beginning January 1 and ending December 31, on an inventory form annually beginning March 1, 1988, if the material is present at a facility in threshold (inventory) quantities (TQ) of 500 pounds or more on any single day.

C. The materials regulated by Subsection B above of these rules are also regulated under the inventory reporting provision of Section 312 of Title III of the Superfund Amendments and Reauthorization Act.

Incorporated in the federal reporting provisions was an initial temporary threshold for reporting quantities of these materials such that for 1987, 1988 and 1989 inventory quantities which met or exceeded 10,000 pounds were reportable.

In 1990, EPA published its final threshold regulations setting the final threshold (inventory) quantity for 1990 and beyond at 10,000 pounds. In this area, the Louisiana law and federal law differ. The state requires reporting of all regulated materials at the 500-pound level unless the threshold quantity for an extremely hazardous substance is lower.

D. Mixtures without their own Chemical Abstract Service (CAS) numbers will be reported as follows: The mixture trade name or common name shall be listed with the hazardous component(s) which require its reporting on the Tier Two inventory report.

The component(s) Chemical Abstract Service (CAS) number, if available, will also be provided in association with the hazardous component. Any component information withheld in contradiction to the most current OSHA MSDS requirements or U.S. EPA's trade secret claim process shall be subject to enforcement and civil liability actions at the state and federal level.

If a hazardous material is part of a mixture, you should report the entire mixture, its total weight, and the hazardous material(s) contained therein, with its percentage present in the mixture, (e.g., if a hazardous solution weighs 100 pounds and is composed of only 5 percent of a particular hazardous material, you should indicate 100 pounds of the mixture, identify the hazardous material and indicate that it is five percent of the mixture).

## **§10111. Release and Incident Reporting**

A. Hazardous Materials Designation

1. The lists and categories of materials identified in Paragraphs C.1, C.2, C.3, and C.4 below are deemed hazardous materials and are hereby adopted pursuant to the authority of the deputy secretary in accordance with RS 30:2361 et seq.
2. The above mentioned listings and categories apply to all inventory and release reporting and handling requirements mandated by RS 30:2361 et seq. and all regulations adopted pursuant thereto.



B. Reportable Releases and Incidents.

Any release or incident involving a regulated hazardous material must be reported immediately by the owner or operator, or one of their designated representatives as soon as the owner or operator or designated representative has knowledge of such release or incident, if it meets one or more of the following criteria:

1. the release directly causes any injury requiring hospitalization or any fatality; or
2. the release results in a fire or explosion which could reasonably be expected to affect the public safety beyond the boundaries of the facility; or
3. the release (other than an application of a pesticide or fertilizer) exceeds the reportable quantity during any continuous 24 hour period when that reportable quantity could be reasonably expected to escape beyond the site of the facility; or
4. the incident, accident or cleanup within a facility could reasonably be expected to affect the public safety beyond the boundaries of the facility ( for example: a facility evacuating its personnel); or
5. the owner or operator knows a protective action beyond the facility has been initiated.

C. Hazardous Materials are established as follows:

1. any material appearing on the most current list of Extremely Hazardous Substances as established by the Environmental Protection Agency (40 CFR Part 355, Appendix A);
2. any material appearing on the most current list of CERCLA Hazardous Substances as established by the Environmental Protection Agency (40 CFR Part 302, Table 302.4);
3. any material appearing on the most current list of Hazardous Substances as established by the Department of Transportation, Research and Special Programs Administration (49 CFR Part 172, Appendix to 172.101);
4. any material on which maintenance of an MSDS is required under the Occupational Safety and Health Administration's Hazard Communication Standard as found in 29 CFR 1910.1200 et seq.

D. Reportable Quantities (RQs) are established as follows:

1. any material and its RQ appearing on the most current list of Extremely Hazardous Substances as established by the Environmental Protection Agency (40 CFR Part 355, Appendix A);
2. any material and its RQ appearing on the most current list of CERCLA Hazardous Substances as established by the Environmental Protection Agency (40 CFR Part 302, Table 302.4);
3. any material and its RQ appearing on the most current list of Hazardous Substances and Reportable Quantities as established by the Department of Transportation, Research and Special Programs Administration (49 CFR Part 172, Appendix to 172.101);
4. any material on which maintenance of an MSDS is required under the Occupational Safety and Health Administration's Hazard Communication Standard as found in 29 CFR 1910.1200 et seq., and does not appear on any of the lists found in Paragraphs 1, 2, or 3 of paragraph D of this section, must be reported if the material released exceeds the RQ of 5,000 pounds hereby established by the Department.

Except all compressed or refrigerated flammable gases and all flammable liquids (as defined in 49 CFR 173.120) which will have a 100 pound RQ and all other liquids requiring maintenance of an MSDS which will have a 1000 pound RQ.

## Reportable Quantity Table

Hazardous Material Group	Reportable Quantity (RQ)
EHS (40CFR Part 355, Appendix A) .....	As designated
CERCLA (40CFR Part 302, Table 302.4) .....	As designated
DOT (49CFR Part 172, Appendix 172.101) .....	As designated
Compressed or refrigerated flammable gases*	100 lbs.
Flammable liquids*	100 lbs.
All other liquids requiring an MSDS*	1000 lbs.
All other materials requiring an MSDS*	5000 lbs.

\* where there are no federal RQs established

### E. Exceptions to Reportable Quantity: Special Circumstances

1. The following special circumstances have been identified by the department and the following specific reportable quantities shall apply:
  - a. Natural gas from crude oil and natural gas production operations (including but not limited to flowlines and gathering lines) regardless of system pressure, and natural gas transmission operations in which the operational pressure exceeds 100 psi, shall have an RQ of 1000 pounds.
  - b. Petroleum refinery and chemical manufacturing facilities which operate flaring systems as part of their manufacturing process shall have the following reportable quantities:
    - i. stack emissions involving the release of sulfur dioxide at a discharge rate of less than 1000 pounds per hour shall have a 24 hour period to report the unpermitted release; and
    - ii. stack emissions involving the release of sulfur dioxide at a discharge rate of more than 1000 pounds per hour shall report the unpermitted release immediately.
  - c. A release to the environment through a cooling tower of a hydrocarbon gas which has previously leaked into the cooling water of the related heat exchanger is not reportable if the concentration of such gas, when released into the atmosphere, is below its lower flammable limit.
  - d. Compressed air, compressed nitrogen and water vapor are not reportable and have no RQs.
  - e. The controlled release of natural gas for maintenance or other purposes is considered a permitted release and is not reportable provided the release cannot be reasonably expected to affect the public safety beyond the boundaries of the facility.
2. For facilities meeting the criteria described below, compressed or refrigerated flammable gases will have a 1000 pound RQ.

To qualify for this RQ, the owner or operator of the facility must provide certification to the department, in writing, that it meets the requirements of LAC 33:V.10111.E.2.; the revised RQ for compressed or refrigerated flammable gases for such facility will commence within thirty days after the department's receipt of such certification unless the department notifies the owner or operator otherwise, in writing, within such thirty day period. Facilities to which this RQ applies are those with:

- a. more than nine full time employees; and
- b. a designated person responsible for and knowledgeable on all applicable state and federal release reporting regulations; and
- c. twenty-four hour on site emergency response capability for responding promptly to fires and hazardous materials releases.

This capability must be internal to the facility or provided by formal industrial mutual aid where a written agreement has been signed and made available to the department for review as certified to the department. (Dependence on local fire departments and public employee emergency responders shall not qualify.)

F. All reportable releases must be reported immediately. Each release or incident must be reported to:

1. local emergency planning committee with jurisdiction over a facility; and then to
2. Office of State Police, Transportation and Environmental Safety Section using the Hazardous Materials Hotline phone number 225/925-6595 or toll free 1-877-925-6595.

Proper notification to the State Police's Hazardous Materials Hotline shall constitute a legal and proper notification to the Department of Environmental Quality, Louisiana Petroleum Gas Commission, and the Louisiana Oil Spill Coordinator.

Note: In the event proper notification to the local emergency planning committee cannot be made, then immediate notification to the State Police is required.

3. The owner or operator must ensure that timely notification is made to the department.
4. The Uniform Hazardous Materials Reporting Form as supplied by the department, which includes the information in paragraph G of this section, should be used by all those involved in incident or release initial notifications (verbal or electronic). The success of this uniform process is dependent on its application on a statewide basis at all levels of the initial notification process.
5. Update notifications must be made by each owner or operator if the circumstances of the release or incident substantially increase in severity, the incident classification changes, or if any of the information in paragraph G of this section which was initially reported changes significantly. For example:
  - a. if there is a change in the recommended offsite protective action to be taken;
  - b. if there are injuries requiring hospitalization or fatalities to personnel not known at the time of the initial report;
  - c. if the release includes a different reportable material than included in the initial report;

- d. if there is a change in incident classification; or
- e. if the initial release notification indicated no offsite protective action and an offsite protective action of road closure or offsite shelter-in-place is made, then an update notification is required.

G. If a facility has a reportable release (i.e., one that meets the requirements specified by either the state and/or federal Right-to-Know laws), the owner or operator must provide, at a minimum, the following information relating to the release:

1. the name and telephone number, and employer of the contact person;
2. the company or responsible party's name;
3. where the incident occurred (mailing address and physical location);
4. date and time the incident began and ended;
5. the identity of the hazardous material released or involved (this would include proper chemical name if available, an indication of whether it is an extremely hazardous substance and whether it is a solid, liquid or gas);
6. the actual amount or an estimate of the amount released; or in the absence of quantity data for the hazardous materials released, one of the following incident classifications may be used.

a. Unusual Event.

This is an incident that is out of the ordinary but does not present a current threat to persons or property. It will not have any adverse affect on public safety. The incident may have the potential to escalate to a more serious emergency, but it is not expected to do so. In this case, no protective action is necessary and none will be recommended.

b. Site Emergency.

This is an incident or emergency which may affect the near-site population but it is generally located within the boundaries of the facility or transport vehicle. Normal operations of the facility or transport vehicle have been adversely impacted.

The incident or emergency is either secured, in the recovery mode, or ongoing, but generally confined to the facility or transport vehicle. The on-site incident or emergency may have the potential to escalate to other areas of the facility or transport vehicle.

This classification is used during emergencies in which a limited number of people have been affected but the potential exists to affect a much larger portion of the population. The facility or transporter may request the closure of adjacent roadways as precautionary action.

A protective action of road closure, shelter-in-place, evacuation, or no protective action necessary must be provided.

c. General Emergency.

This is an emergency which goes beyond the facility or transport vehicle. It has either affected or will affect the general population. The facility or transport vehicle experiences a large release which will impact beyond its boundaries. This occurs when there is an explosion or fire at the facility which may not be under control.

The emergency situation is beyond the resources of the facility or transporter. The facility response personnel are unable to contain the event and it may escalate before coming under control. In order to protect the public safety, a protective action of road closure, shelter-in-place, or evacuation must be issued immediately.

7. whether the material released escaped or could reasonably be expected to escape beyond the site of the facility;
  8. if available, the substance's hazard class and any other identifier (e.g., U.N. number, CHRIS code, etc.);
  9. medium into which the hazardous materials was released ( e.g. air, water, land );
  10. whether the release resulted in a fire or explosion;
  11. injury to personnel, or a fatality resulting from the release or incident;
  12. details regarding wind direction, wind speed, temperature, and precipitation;
  13. any need or a recommendation for an offsite protective action (road closure, shelter-in-place, evacuation, or none);
  14. details of the release or incident; and
  15. whether other responsible state and local agencies such as the local emergency planning committee has been notified.
- H. Facilities must also make follow-up written reports for all reportable releases and incidents within five business days after the release or incident has occurred. This report must be made to the local emergency planning committee with jurisdiction over a facility and to the Department of Public Safety and Corrections, Office of State Police, TESS Right-to-Know Unit , P.O. Box 66614, Baton Rouge, LA, 70896.

The format for this report should be as outlined in Subsection G above. Any additional information not given in the initial telephone notification should also be included.

## **§10112. Response, Command and Coordination**

- A. As per the authority granted in R.S. 30:2376, the Office of State Police, Transportation and Environmental Safety Section will coordinate emergency response activities arising from any release, or threatened release or incident requiring reporting under these rules.

Except as otherwise provided by law, as State On-Scene Coordinator (SOSC), the Louisiana State Police shall have the responsibility to ensure a safe and timely resolution to any hazardous materials release or incident.

All responding industries, contractors, and agencies shall participate in the Incident Command process. Only those participants meeting the training requirements of EPA in 40 CFR 311 and OSHA's regulations in 29CFR1910.120 shall engage in active response or remedial activities within areas of hazardous materials contamination or threatened release.

B. All persons and facilities regulated by R.S. 30:2361 et seq. shall comply with all the requirements relative to the entry, inspection, investigation, response and emergency coordination efforts of the Office of State Police as authorized in R.S. 30:2361 et seq.

C. Response Contractor Registration.

All hazardous materials and hazardous wastes emergency response and spill contractors will register with the Office of State Police, Right-to-Know Unit, within sixty days of the final promulgation of these rules. This registration will include the following information:

1. business name, physical and mailing address;
2. business and emergency (24 hour) telephone numbers;
3. Louisiana Contractor License information;
4. identification of response capabilities (oil, chemical, radiological, biological, etc.)
5. copy of emergency response procedures including regulatory responsibilities;
6. site safety protocols;
7. certification statement identifying compliance with all EPA, OSHA, and State regulations including training certification compliance;
8. response time estimates with identified geographic perimeters (Minimum: one, two, and four response times);
9. hazardous material response equipment capability (Minimum: Personal protective clothing, hazardous material monitoring, containment and chemical transfer and handling capability);

### **§10113. Exemptions**

- A. Certain persons and substances have been exempted from the inventory reporting requirements contained in these rules. There are no exemptions granted for release reporting of regulated substances.
- B. Persons exempted from reporting certain substances under state law as outlined in Subsection C below are cautioned to examine Title III of the Superfund Amendments and Reauthorization Act (SARA) because not all of these exemptions are applicable to federal law.

If a substance is not exempt under federal law, in most cases it is reportable to the Emergency Response Commission (via Department of Public Safety and Corrections), the local emergency planning committee (one in each parish), and the local fire department having jurisdiction over a facility.

- C. The following persons are exempt from the inventory reporting requirements of these rules:
1. residential users;
  2. owners or operators of hotels, motels, restaurants, apartment buildings or office buildings which use only small quantities of air conditioning and cleaning supplies;
  3. owners or operators of retail sales establishments which sell consumer products or food stuffs packaged for distribution to, and intended for use by, the general public and who have storage areas or storerooms in such establishments which are separated from shelf or display areas, but maintained within the physical confines of such retail establishments;
  4. owners or operators of cosmetology salons, and barber salons; and
  5. owners or operators of retail gasoline service stations having only gasoline and/or diesel in underground storage tanks and in full compliance with the Louisiana Department of Environmental Quality Underground Storage Tank Program.
- D. The following materials are exempt from the inventory reporting requirements of these rules:
1. any hazardous waste as such term is defined by the Solid Waste Disposal Act as amended (42 U.S.C. 6901 et seq.) when subject to regulations issued under that Act;
  2. tobacco or tobacco products;
  3. wood or wood products;
  4. "articles"
    - a. which are formed to a specific shape or design during manufacture;
    - b. which have end use function(s) dependent in whole or in part upon the shape or design during end use; and
    - c. which do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use;
  5. food, drugs, cosmetics or alcoholic beverages in a retail establishment which are packaged for sale to consumers;
  6. foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;
  7. any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 1251 et seq.) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers;
  8. any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) when it is in solid, final form for direct administration to the patient (i.e., tablets or pills);

9. any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
10. any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;
11. any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;
12. any substance to the extent it is used in a medical research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;
13. any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

#### **§10115. Hazard Communication**

- A. The Department of Public Safety and Corrections adopts the Hazard Communication Standard as detailed in Title 29 CFR Parts 1910.1200 et seq., as part of these rules.

All facilities subject to these state rules (other than any federal, state, or political subdivisions of a state) must also comply with the Hazard Communication Standard as specified in the Occupational Safety and Health Administration (OSHA) rules listed in Title 29 CFR Parts 1910.1200 et seq.

These standards refer to marking of the workplace, communicating to employees of any known hazardous properties of various substances , etc.

#### **§10117. Failure to Report: Penalties**

- A. Failure to report any regulated material on a Tier Two Inventory form, as provided in these rules and under the authority of R.S. 30:2361-2380, may result in the levying of civil penalties up to \$25,000 for each regulated hazardous material not reported and/or for each non-reported release or incident involving a regulated hazardous material.
- B. The burden of proof shall be on the owner or operator of a facility to show that the failure to report a hazardous material or release was inadvertent.
- C. Small businesses, as defined by these rules, which have any omission from the inventory reporting forms will receive, on first offense, a warning rather than a civil penalty.
- D. Careless Handling of a Hazardous Material
1. R.S. 30:2373(D)(1) provides that any person who handles, stores, or otherwise maintains a hazardous material regulated by R.S. 30:2361-2380, the Right-to-Know Law in a wanton and reckless manner without regard for the hazards of the material or of the circumstances of such use, storage, or handling shall be guilty of careless handling.
  2. R.S. 30:2373(D)(2) provides that for any owner, operator, or facility that violates R.S.30:2373(D) the department may levy a civil penalty not to exceed twenty-five thousand dollars per violation.



E. Reckless Handling of a Hazardous Material

1. R.S. 30:2373(E)(1) provides that no person shall intentionally handle, store, or otherwise maintain any hazardous material regulated by the Right-to-Know Law in a manner which endangers human life.
2. R.S. 30:2373(E)(2) provides that any person, owner, operator, or facility that willfully violates R.S. 30:2373(E) may be assessed a civil penalty by the department not to exceed twenty-five thousand dollars per violation per day or upon first conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

Upon second or subsequent conviction of a violation of R.S. 30:2373(E)(1), said person, owner, operator, or facility shall be fined not less than five hundred dollars nor more than ten thousand dollars or imprisoned with or without hard labor for not less than six months nor more than ten years.

F. Intentional Failure to Report a Hazardous Material Release or Incident

1. R.S. 30:2373(C)(3) provides that for owners and operators who knowingly fail to report a reportable release of a hazardous material regulated by the Right-to-Know Law the department may assess a civil penalty not to exceed twenty-five thousand dollars per violation per day.

**§10119. Inventory Form**

- A. Tier Two "E-filing" is the preferred method of reporting the chemical inventory required in these rules. All industries and businesses will be required to utilize this electronic means of inventory reporting by March 1, 2002. The use of this "E-filing" process allows for the immediate access of facility and chemical information by all local emergency planning committees and fire departments having Internet capability. Paper filing of "Tier Two Emergency and Hazardous Chemical Inventory" shall be an acceptable alternative to the E-filing of such inventory for March 1, 2001 only.
- B. The "Louisiana Tier Two Emergency and Hazardous Chemical Inventory" form is the official inventory form for compliance with R.S. 30:2361-2380 Louisiana's Right-to-Know law, and is the form selected by the Louisiana Emergency Response Commission for inventory reporting as required under Section 312 of SARA.

The inventory form can be obtained via the Right-to-Know website at [www.dps.state.la.us/rtkcover.html](http://www.dps.state.la.us/rtkcover.html) or upon request to the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section- Mail Slip 21, Box 66614, Baton Rouge, LA 70896.

**§10121. Fees**

- A. An annual fee shall be submitted with the inventory form by each owner or operator required to report under the Right-to-Know Law. The fee shall be assessed in proportion to the number of hazardous materials manufactured, used, or stored on site.
- B.
  1. Until June 30, 2001, the fees for facilities not meeting the definition of "small business" in R.S. 30:2363 shall be assessed as follows:

**Number of Hazardous Materials****Present at Facility****Amount of Fees Charges**

01 to 25	\$ 75.00
26 to 75	\$100.00
76 to 100	\$200.00
Over 100	\$300.00

2. Any facility required to pay a fee pursuant to R.S. 30:2374 and any retail gas station exempt from reporting pursuant to R.S. 30:2370 shall not be required to pay an additional fee to the LEPC other than the fees already imposed by the local emergency planning committee for the collection of information required by the Right-to-Know Law prior to the 1997 Regular Legislative Session.
  3. In the case of owners or operators reporting facilities with numbers of hazardous materials referenced above at multiple locations throughout the state, no owner or operator shall be assessed total fees in excess of two thousand dollars.
  4. The fee per facility for small businesses as defined in the Right-to-Know Law shall not exceed twenty-five dollars.
- C. Small businesses, as defined in these rules, would submit a reduced fee of \$25 for each facility. The same ceilings on fees as detailed above would apply.
- D. State, parish, and municipal governmental entities who must report under these rules are exempt from paying any fee.
- E. All checks must be made payable to the Right-to-Know Unit and submitted as applicable with the printed copy of the Tier II invoice (which is generated automatically by the program upon electronic submission of the completed Tier Two form). If an inventory form is received without proper payment it cannot be processed, and compliance with the law is not attained.
- F. The following facilities are exempt from filing fees but must submit Tier Two Inventory forms:
1. liquified petroleum gas facilities having only liquified petroleum gas which are in full compliance with Liquified Petroleum Gas Commission regulations.

**§10123. Trade Secret Claims; Procedures; Resolution**

- A. The Department of Public Safety and Corrections adopts as its own the Trade Secrets provisions as found in Title III, Section 322 of the "Superfund Amendments and Reauthorization Act of 1986" (42 U.S.C.A. Section 11042) as passed by the United States Congress.